

1 STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
3

4 DECISION ON ADMINISTRATIVE APPEAL
5 IN RE: PUBLIC WORKS CASE NOS. 97-018 and 97-019
6 PRIMARY PLANT HEADWORKS AND CANNERY SEGREGATION PROJECT
7 CITY OF MODESTO
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10 I. INTRODUCTION AND PROCEDURAL HISTORY

11 By letters of March 17 and March 21, 1997, the Operating
12 Engineers Local Union No. 3 ("Union") requested a public works
13 coverage determination from the Department of Industrial Relations
14 ("Department") as to whether the construction of the Primary Plant
15 Headworks and Cannery Segregation Pipeline Project ("Project"), a
16 sewer system improvements project undertaken by the City of Modesto
17 ("City"), is a public works project under California prevailing
18 wage law.

19 The Union contends that the Project is a public works for
20 which prevailing wages must be paid. It disputes the City's claim
21 that the City's charter city status provides an exemption from
22 compliance with California prevailing wage law on the grounds that
23 the Project is a "municipal affair"; to the contrary, the Union
24 asserts that no such exemption applies because the benefits of the
25 Project extend well beyond the geographic scope of the City.

26 Upon request by the Department, the City responded to the
27 Union's position by letter of October 31, 1997. The City provided
28 the Department with factual background, including an appendix of

1 primary source documents, on the formation of the Modesto Municipal
2 Sewer District No. 1 ("District"), the financing of the Project,
3 and the scope of the work. See Part III, Relevant Facts.

4 The City argues that the Project qualifies as a municipal
5 affair and therefore the City is excused from prevailing wage law
6 requirements under the charter city exemption contained in article
7 XI, section 5 of the California Constitution. In support of its
8 characterization of the Project as a municipal affair, the City
9 asserts that the Project is subject to the City's complete control.
10 The revenue bonds used to finance the Project were issued by the
11 City through the District, and any fees generated outside the City
12 used to retire the bond indebtedness are merely incidental to the
13 furtherance of the main municipal purpose of the Project. The City
14 further asserts that the construction occurring outside the
15 geographical boundaries of the City and the provision of sewer
16 system services to areas outside the City do not implicate a
17 statewide concern.

18 U.A. Local No. 442, the Plumbers and Pipe Fitters Local for
19 Stockton and Modesto, filed written argument on March 19, 1999. In
20 support of the proposition that prevailing wage obligations apply,
21 U.A. Local No. 442 argues that the segregation of industrial
22 cannery waste is the primary purpose of the Project and that the
23 Project will have effects, financial and otherwise, outside the
24 boundaries of the City. Accordingly, the Project is a matter of
25 statewide concern, and the municipal affairs exemption does not
26 apply. U.A. Local No. 442 also argues that, as a matter of law,
27 compliance with California prevailing wage law is always a matter
28 of statewide concern.

1 On November 15, 1999, the Director of the Department of
2 Industrial Relations ("Director") issued a public works coverage
3 determination finding that the Project is subject to prevailing
4 wage obligations pursuant to Labor Code section 1720(a). The
5 Director found that the Project is a matter of statewide concern on
6 the following three grounds: 1) a source of Project financing
7 derives from revenue generated outside the City in the form of user
8 fees; 2) the primary purpose of the Project is to address problems
9 with industrial waste produced outside the City in unincorporated
10 areas of Stanislaus County; and 3) the geographic scope of the
11 Project extends beyond the territorial boundaries of the City.

12 On December 15, 1999, the City filed an appeal of the
13 Director's coverage determination, stating no additional
14 substantive facts. In addition to the legal issues previously
15 raised and argued, the City further contends that a variation of
16 the doctrine of laches operates to preclude enforcement of the
17 Director's determination.

18 Upon review of the record, and for the reasons set forth
19 below, the appeal is denied and the initial determination that the
20 Project at issue is a public works project subject to the payment
21 of prevailing wages is upheld.

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1 **II. ISSUES AND CONCLUSIONS ON APPEAL**

2 The issues on appeal are as follows:

- 3 A. Whether the Project is a municipal affair, such that
4 the charter city exemption from California prevailing
5 wage law is applicable?
- 6 B. Whether the doctrine of laches precludes enforcement of
7 the Director's determination?

8 The conclusions on appeal are as follows:

- 9 A. For the following reasons, the Project is not a
10 municipal affair but instead a matter of statewide
11 concern for which the payment of prevailing wages is
12 required:
- 13 1. The primary purpose of the Project is to
14 address sewage capacity issues created by the
15 heavy seasonal flow of industrial waste from
16 contiguous and unincorporated areas of
17 Stanislaus County outside the City;
- 18 2. The revenue bonds that were issued to finance
19 the Project will be retired in part from fees
20 levied against users outside the City; and
- 21 3. The Project transcends the geographical
22 boundaries of the City and reflects a shared
23 community of interests between those people
24 and businesses within the City and those
25 outside its territorial limits.
- 26 B. The City has not carried its burden of proving the
27 elements of the defense of laches.

28 **III. RELEVANT FACTS¹**

29 The District, created by Resolution of the City in 1966, was
30 organized and exists pursuant to the Municipal Sewer and Water
31 Facilities District Law of 1911. Health & Saf. Code § 4600 et
32 seq. Under the terms of the Resolution and by state law, the
33 District is governed by and under the jurisdiction of the Modesto
34 City Council, which serves as its Board of Directors. The

35 ¹ The facts are extracted primarily from the appendix of primary source
36 documents, which accompanied the October 31, 1997 letter of the City, referred
37 to in Part I, Introduction and Procedural History.

1 boundaries of the District include the City and certain contiguous
2 unincorporated industrial areas located outside the City in
3 Stanislaus County, including the Beard Industrial Tract.² A
4 consideration of the City in forming the boundaries of the
5 District was the additional industrial tax base in the
6 unincorporated industrial areas that would support improvements to
7 its wastewater collection, treatment, and disposal system
8 ("System"). The District was formed to finance the local share of
9 System improvements and over the years, the City, through the
10 District, has accomplished the construction of several System
11 improvements. Also serviced by the System are northern portions
12 of the neighboring city of Ceres and the unincorporated community
13 of Empire.

14 The City has a population of approximately 180,000 and
15 covers approximately 34 square miles. It is primarily an
16 agricultural community. There are over 4,000 acres of
17 industrially zoned lands within the greater Modesto urban area,
18 of which 1,100 acres are within the territorial boundaries of the
19 City. Approximately 400 commercial manufacturing plants are
20 located in and surrounding the City, with the majority of the
21 large manufacturing employers, including the bulk of the food
22 processing plants, located in the Beard Industrial Tract. In

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25 ² Written notice of July 15, 1966 from Modesto's City Council to
26 property owners within the then proposed sewer district stated the following:
27 "A new treatment plant and new trunk sewers will encourage expansion of
28 existing industry and encourage additional plants to locate here, contributing
to the local economy and to county and school tax bases. New trunk sewer
capacity will enable the city to annex new residential and commercial areas
without overloading existing trunk sewers." October 31, 1997 letter of the
City, exhibit C of appendix. See L.I.F.E. Committee v. The City of Lodi
(1989) 213 Cal.App.3d 1139, 1147-1148 [262 Cal.Rptr. 166] (holding that
matters relating to the annexation of territory are of statewide concern and
thus are not municipal affairs).

1 1992, the service area for the System had a population in excess
2 of 225,000, including areas outside the boundaries of the City.
3 In the three-month summer canning season, food processing sewer
4 discharges are equivalent to a contributing population of more
5 than 2,000,000 persons.

6 Prior to the commencement of the Project, the System
7 consisted of 74.6 miles of trunk sewers, 422.2 miles of sanitary
8 sewers and 38 wastewater lift stations. Wastewater was treated
9 at the primary treatment plant in the City, then pumped to a pond
10 site 6.5 miles southwest of the City, where biological treatment
11 produced water for irrigation of City-owned land, storage, or
12 discharge into the San Joaquin River.

13 In 1991, the City recognized that the System had reached the
14 capacity provided by its last expansion, and that improvement was
15 necessary. Accordingly, the City drafted a 1995 Wastewater
16 Master Plan, which mapped out the steps to be taken to provide
17 wastewater service for the next 20 to 40 years. Included in the
18 Plan was the Project at issue in the coverage determination. The
19 general purpose of the Project was to segregate the seasonal flow
20 of cannery waste from the municipal sewage flow. Its general
21 components were the construction of improvements at the City's
22 water quality control plant ("Plant"); implementation of a
23 cannery segregation project, including construction, relining and
24 replacement of pipelines within the System; construction of a
25 subtrunk sewer extension; and, purchase of compost equipment.
26 The work on the Plant took place entirely within the City.
27 Almost all of the remaining components, including the segregation
28 pipeline, took place outside the territorial limits of the City.

1 Some of the components were constructed both within and without
2 the City limits. A Notice of Completion of the Project was
3 recorded in September 1999.

4 The approximately \$38 million Project was financed by
5 accumulated City funds as well as revenue bonds issued by the
6 City through the District in the amount of \$32.4 million. All
7 gross revenues from the bonds were maintained in a City "Sewer
8 Enterprise Fund," which contained amounts collected by the City
9 for financing the construction, operation and maintenance of the
10 System. The bond indebtedness is to be paid by the City from the
11 net revenues it derives from rates, fees and charges from the
12 operation of the System. Users both within and without the City
13 pay rates, fees and charges. Over half of the City expenditure
14 on the Project financed construction within the City limits. The
15 balance of the funds was spent on construction that took place
16 outside the City limits. The City, a charter city, entered into
17 the contracts for the construction of the Project and
18 administered the expenditure of funds.

19 IV. DISCUSSION

20 A. The Project is a "public works" as defined by statute.

21 Labor Code section 1720(a) generally defines public works to
22 mean: "Construction, alteration, demolition, or repair work
23 performed under contract and paid for in whole or in part out of
24 public funds" The City admits that the project is a
25 public works under 1720(a). October 31, 1997 letter of the City,
26 p. 5. The work is construction, performed under contract and
27 paid for out of public funds. The only question, then, is
28 whether the charter city provision of the California Constitution

1 exempts this public works project from prevailing wage
2 obligations.

3 B. The City's charter city status does not exempt the Project
4 from prevailing wage requirements because the Project's
5 nature and purpose, funding, and geographic scope render it
6 a matter of statewide concern.

7 Under article XI, section 5 of the California Constitution,
8 a city "may make and enforce all ordinances and regulations in
9 respect to municipal affairs, subject only to restrictions and
10 limitations provided in their several charters and in respect to
11 other matters they shall be subject to general laws." The City
12 of Modesto has, by operation of Section 200 of its charter,
13 availed itself of the power to make and enforce all laws and
14 regulations with respect to municipal affairs. The primary issue
15 presented in this case is whether the Project is a municipal
16 affair such that the City's charter exempts it from prevailing
17 wage obligations.

18 Insofar as a charter city legislates with regard to
19 municipal affairs, its charter prevails over general state law.
20 Sonoma County Organization of Public Employees v. County of
21 Sonoma (1979) 23 Cal.3d 296, 315 [152 Cal.Rptr. 903]. The
22 prevailing wage law, a general law, does not apply to the public
23 works projects of a charter city so long as the projects in
24 question are strictly within the realm of municipal affairs.
25 City of Pasadena v. Charleville (1932) 215 Cal. 384 [10 P.2d
26 745], disapproved on other grounds in Purdy & Fitzgerald v. State
27 of California (1969) 71 Cal.2d 566, 585 [79 Cal.Rptr. 77, 456
28 P.2d 645]; Vial v. City of San Diego (1981) 122 Cal.App.3d 346
[175 Cal.Rptr. 647]. No exact definition of the term "municipal

1 affair" can be formulated and judicial determination is necessary
2 on a case by case basis. Bishop v. City of San Jose (1969) 1
3 Cal.3d 56, 62-63 [81 Cal.Rptr. 465, 460 P.2d 137].

4 In general, a municipal affair is defined as a matter that
5 affects the local citizens rather than the people of the state
6 generally, whereas a matter of statewide concern extends beyond
7 the local interests at stake. Southern California Roads Co. v.
8 McGuire (1934) 2 Cal.2d 115, 120 [39 P.2d 412]; Gadd v. McGuire
9 (1924) 69 Cal.App. 347, 354-355 [231 P. 754]. Matters of
10 statewide concern also include matters "the impact of which is
11 primarily regional rather than truly statewide." Committee of
12 Seven Thousand v. Superior Court of Orange County (1988) 45
13 Cal.3d 491, 505 [247 Cal.Rptr. 362, 754 P.2d 708] (construction
14 of highway corridors likely to require regional coordination and
15 to impact persons living outside the boundaries of the charter
16 city is of statewide concern). Doubt as to whether a matter is
17 truly a municipal affair is resolved in favor of the legislative
18 authority of the state. Baggett v. Gates (1982) 32 Cal.3d 128,
19 140 [185 Cal.Rptr. 232, 649 P.2d 874] (holding that the home rule
20 provisions of the California Constitution do not preclude
21 application of the Public Safety Officers' Procedural Bill of
22 Rights Act to a charter city).

23 The treatment and disposal of a city's sewage historically
24 has been considered a municipal affair. Loop Lumber Co. v. Van
25 Loben Sels (1916) 173 Cal. 228, 232 [159 P. 600]; City of Santa
26 Clara v. Von Raesfeld (1970) 3 Cal.3d 239, 246 [90 Cal.Rptr. 8,
27 474 P.2d 976]. In many instances, however, the question of
28 sanitation is one of broader scope that cannot be adequately

1 handled by a single municipality. In such instances, it is not a
2 municipal affair; rather, it "falls within the class of public
3 purpose such as irrigation and reclamation, for which the
4 legislature has the undoubted authority to provide governmental
5 agencies or districts by general laws." Pixley v. Saunders (1914)
6 168 Cal. 152, 160 [141 P. 815] (examining the constitutionality of
7 the Sanitary District Act).

8 In Southern California Roads Co. v. McGuire, supra, 2 Cal.2d
9 115 [39 P.2d 412], the California Supreme Court considered the
10 following factors³ relevant in determining whether a project was
11 a municipal affair subject to the charter city exemption: (1)
12 the extent of non-municipal control over the project; (2) the
13 source and control of the funds used to finance the project; and,
14 (3) the nature and purpose of the project.

15 A fourth factor, related to factor three, is the
16 extraterritorial scope of the project. Young v. Superior Court of
17 Kern County (1932) 216 Cal. 512, 517-518 [15 P.2d 163]. "[W]hen a
18 general law of the state . . . provides for a scheme of public
19 improvement, the scope of which intrudes upon or transcends the
20 boundary of one or several municipalities, together with
21 unincorporated territory, such contemplated improvement ceases to
22 be a municipal affair and comes within the proper domain and
23 regulation of the general laws of the state." Wilson v. City of
24 San Bernardino (1960) 186 Cal.App.2d 603, 611 [9 Cal.Rptr. 431].
25 See also County of Los Angeles v. Hunt (1926) 198 Cal. 753, 774-

27 ³ Although McGuire involved a road works improvement project, the
28 factors analyzed by the court serve as a useful framework for analysis. See
Decision on Administrative Appeal in re: Public works Case No. 93-029, City
of Big Bear Waterline Reconstruction Project, a Public Works Precedential
Decision.

1 775 [247 P. 897] (holding that street improvements transcending
2 the boundaries of a charter city, undertaken by a county pursuant
3 to the Acquisition and Improvement Act, cease to be a municipal
4 affair).

5 Application of the above factors to the present case is
6 appropriate.

7 1. The Extent of Non-Municipal Control Over the Project.

8 The City appears to have had sole control over the Project.
9 The City formed and governs the District under which the Project
10 was constructed. It oversaw the construction. The City let and
11 entered into the construction contracts. Therefore, the Project
12 is not disqualified as a municipal affair on the basis of this
13 factor.

14 2. The Source and Control of the Funds Used to Finance
15 the Project.

16 The Project was financed by local City revenues as well as
17 bond revenues raised by the City through the District and
18 maintained in a separate City fund. The City administered the
19 expenditures on the Project.

20 The bond debt, however, is to be retired from rates, fees
21 and charges collected for the use of and the services furnished
22 by the System. Users outside the City, including the Beard
23 Industrial Tract, the Empire Sanitary District and a portion of
24 the City of Ceres, will therefore finance the Project because the
25 rates, fees and charges collected from these users will help
26 retire the bond debt. This is consistent with the City's
27 original decision to extend the District boundaries beyond the
28 City so that the additional industrial tax base from the outside

1 areas would help support System improvements. The facts indicate
2 that the Project is financed from sources both within and without
3 the City. Therefore, in analyzing this factor, the Director
4 concludes that the imposition of fees on users outside the City
5 for the purpose of retiring the City's bond indebtedness
6 implicates a statewide concern.

7 3. The Nature and Purpose of the Project.

8 The Project includes work on the Plant and on the cannery
9 segregation pipeline. The Plant, located in the City, treats
10 wastewater from both the City and the outside industrial areas.
11 The treated water is pumped to a pond site outside the City. The
12 effluent water from the pond is used as irrigation on City-owned
13 land, stored or discharged into the San Joaquin River, which is
14 ten miles west of the City.

15 As stated by the City, the primary purpose of the Project is
16 to separate the seasonal flow of industrial waste from the more
17 constant municipal sewage flow. October 31, 1997 letter of the
18 City, p. 4. It is clear from the data concerning discharge to
19 the System that the lionshare of the wastewater into the System
20 derives from the industrial areas outside the City. During the
21 three-month summer canning season, food-processing discharges,
22 most of which derive from manufacturers located outside the City,
23 approximate the wastewater contribution to the System of over
24 2,000,000 people.

25 In addition, the pretreatment program of the System is
26 designed to assure high quality effluent water for discharge to
27 the San Joaquin River. Such a program monitors a general public
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1 health condition involving a United States water.⁴ The
2 California Supreme Court has stated that the protection of
3 navigable waters and the maintenance of public health are matters
4 of statewide concern. Santa Clara v. Von Raesfeld, *supra*, 3
5 Cal.3d 239, 246 [90 Cal.Rptr. 8, 474 P.2d 976].

6 Given that the primary purpose of the Project is to
7 segregate the high volume of industrial waste originating mainly
8 in unincorporated areas of Stanislaus County (the Beard
9 Industrial Tract) from the City's domestic sewage flow, the
10 Director concludes that analysis of the nature and purpose of the
11 Project militates in favor of finding the Project to be a matter
12 of statewide concern. Additionally, the Director finds that
13 improvements to the System ultimately serve a broader purpose in
14 maintaining public health on a regional basis and protecting the
15 waters of the San Joaquin River.

16 4. The Geographic Scope of the Project.

17 Closely related to the nature and purpose of the Project is
18 its geographic scope. When a project intrudes upon or transcends
19 a municipality into unincorporated territory, the project ceases
20 to be a municipal affair and comes under general state laws.
21 Wilson v. City of San Bernardino, *supra*, 186 Cal.App.2d 603, 611
22 [9 Cal.Rptr. 431]. While the Plant construction phase took place
23 within the City limits, a substantial portion of the Project took
24 place outside the City limits, particularly in the construction

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26 ⁴ The environmental and public health concerns relating to the City's
27 wastewater collection, treatment and disposal system are noted by the Central
28 Valley Region's California Regional Water Quality Control Board ("CRWQCB") in
its Waste Discharge Requirements for the City. CRWQCB's Order No. 94-129,
exhibit D of appendix to October 31, 1997 letter of the City, contains the
prohibition against reclaimed wastewaters being used for irrigating food crops
for human consumption. It also states that "[w]astes discharged to land shall
not cause degradation of any waters of the State."

1 of the cannery segregation pipeline. . Therefore, the Director
2 finds that the extraterritorial scope of the Project demonstrates
3 that it is not strictly a municipal affair, but rather a matter
4 of statewide concern. This conclusion is supported by the vital
5 community of interests shared by the people and businesses within
6 the City and the people and businesses in the unincorporated
7 areas of Stanislaus County also served by the System. As
8 highlighted by the Court of Appeal in Gadd v. McGuire, *supra*, 69
9 Cal.App. 347, 357 [231 P. 754], a case involving the construction
10 of a storm sewer system, "[i]f the city should construct a
11 sanitary sewer system and none should be constructed in the
12 thickly settled community occupying the contiguous unincorporated
13 territory, it is more than likely that there would be unsanitary
14 conditions, threatening the health and welfare of the nearby city
15 dwellers as well as those living just outside the city, in spite
16 of the city's enterprise." The court in Gadd concluded,

17 These considerations can lead to but one
18 conclusion; The improvement of the streets of a
19 city or town, and matters of sanitation or of
20 storm-water protection therein, are municipal
21 affairs when the special benefits derived
22 therefrom are limited to the inhabitants or
23 property owners of such city or town. But in many
24 instances street improvements, including sanitary
25 and storm-water sewers, may and do become affairs
26 of a broader scope which cannot be handled
27 adequately by the municipal authorities of a
28 single city or town for the reason that they
 directly and peculiarly affect the inhabitants and
 property owners of two or more cities or towns, or
 of one or more cities or towns and outside
 unincorporated territory, and they do so in such a
 way that the purposes sought to be accomplished by
 the improvement can be effected only by a single,
 comprehensive scheme of construction, all the
 parts of which are so related to one another that
 the omission of any one part would necessarily
 impair or destroy the usefulness of the remainder.
 In such cases the improvement, jointly undertaken

1 for the common benefit of all, is not a "municipal
2 affair," as that term is used in our Constitution.

3 *Id.* at 357-358.

4 The City cites authority for the proposition that a scheme
5 does not lose its character as a municipal affair if the supply
6 of water to territory outside a city's boundaries is incidental
7 to the main purpose of supplying water to the inhabitants of a
8 charter city. City of South Pasadena v. Pasadena Land and Water
9 Company (1908) 152 Cal. 579, 594 [93 P. 490]; Durant v. City of
10 Beverly Hills (1940) 39 Cal.App.2d 133 [102 P.2d 759]. The City
11 extends the rationale of South Pasadena to the treatment of
12 wastewater and argues that the City may, without losing its
13 municipal affairs exemption, contract with users outside its
14 borders for sewage disposal, finance sewer works, and make
15 provisions for repayment of such financing by charges to those
16 within and without its boundaries so long as such charges are
17 incidental to the furtherance of the municipal enterprise.

18 The facts of the present case do not support the City's
19 position. Here, the primary purpose of the Project is the
20 resolution of problems created by non-municipal industrial
21 wastewater and the majority of the wastewater treated is from
22 outside the City. It therefore can hardly be said that the
23 collection, treatment, and disposal of this industrial wastewater
24 is merely incidental to the furtherance of the municipal
25 enterprise.

26 Also, the cases cited by the City involve the supply and
27 distribution of water to a city's inhabitants. It is logical that
28 where the water source is not located within the municipality, the

1 water project necessarily will extend beyond the city's
2 geographical territory in order to reach the water source. And, if
3 in the course of bringing water to a city from an outside water
4 source, territory outside the city is also being served, the
5 extraterritorial aspect of the project is clearly "incidental" to
6 the furtherance of the municipal enterprise. Assuming the City's
7 analytical construct is correct that water projects and sewer
8 projects can be analogized, the extraterritorial aspect of the
9 Project in this case is clearly not incidental to the furtherance
10 of the municipal enterprise. This is not a case where the sewer
11 project is intended to serve only the needs of the City's residents
12 but, for reasons of sheer geography, must extend beyond the City's
13 territorial limits in order, for instance, to reach a disposal area
14 for the effluent water. In that example, the extraterritorial
15 aspect of the work might be deemed incidental to providing service
16 to the City's residents.⁵ Here, by contrast, the City has
17 undertaken to provide service to a large industrial sector located
18 primarily outside the City which, during the summer canning season,
19 generates sewer discharges to the System equivalent to over 10
20 times the population of the City. The extraterritorial scope of
21 the Project is far from "incidental." It is fundamental to the
22 primary purpose of the Project itself.

23 Often, as in this case, the issue of sanitation is better
24 addressed on a regional, rather than strictly municipal, level.
25 The formation of the District reflects just such a regional
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27 ⁵ To simplify the analogy in favor of the City, the example given does
28 not contemplate the examination of statewide environmental concerns, such as
the protection of navigable waters and the maintenance of public health. See
Santa Clara v. Von Raesfeld, supra, 3 Cal.3d 239, 246 [90 Cal.Rptr. 8, 474
P.2d 976].

1 approach. The geographical area of the District is based on a
2 broader community of interests, which transcends the exclusive
3 interests of the City. As such, the City errs in characterizing
4 the cannery waste segregation purpose of the Project, the fees on
5 users of the System outside the City, and the extraterritorial
6 scope of the Project as merely "incidental" to the furtherance of
7 the municipal enterprise.

8 To summarize, the City is correct that control over the
9 Project vests with the municipality. On this basis alone, the
10 City would retain its municipal affairs exemption from the
11 obligation to comply with California prevailing wage law.
12 Analysis of the other factors, however, takes the Project outside
13 the ambit of a municipal affair. The primary purpose of the
14 Project is to address sewage capacity issues created by the
15 seasonal flow of industrial waste from the unincorporated Beard
16 Industrial Tract. Construction of the cannery segregation
17 pipeline takes place outside the boundaries of the City.
18 Financing of the project is derived in part from the imposition
19 of fees on users outside the City. An improved sanitary sewer
20 system benefits equally those within the City and those outside
21 its borders. Therefore, the Director finds that the nature and
22 purpose, funding and the extraterritorial scope of the Project,
23 when considered together, render the Project a matter of
24 statewide concern for which the payment of prevailing wages is
25 required.

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1 C. The City has failed to meet its burden of proving the
2 elements of the defense of laches.

3 The City asserts that the delay in deciding the issue of
4 coverage precludes enforcement of the Director's determination,
5 by operation of the doctrine of laches. The two main elements of
6 the affirmative defense of laches are unreasonable delay and
7 prejudice. Prejudice is never presumed. The party asserting
8 laches as a defense bears both the burden of producing evidence
9 and the burden of proving that the delay was unreasonable and
10 that it resulted in prejudice. Conti v. Board of Civil Service
11 Commissioners of the City of Los Angeles (1969) 1 Cal.3d 351 [82
12 Cal.Rptr. 337, 461 P.2d 617].

13 The City's failure to plead the specific elements of the
14 defense of laches notwithstanding, the City presented no evidence,
15 other than the mere passage of time, to prove that the delay was
16 unreasonable or that the delay resulted in prejudice. Therefore,
17 the Director finds that the City has not carried its burden of
18 proof and, accordingly, the City's claim of laches is rejected.

19 Moreover, the City argues that because the Project was
20 completed in September 1999, it is therefore unreasonable to
21 require compliance with the Director's coverage determination at
22 this point in time. Questions of coverage and compliance are
23 distinct. Title 8, California Code of Regulations, section 16001
24 vests the Director with the authority to determine questions of
25 coverage under the public works laws. The Director's coverage

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1 determinations are legally constructed policy decisions.⁶ While
2 the City raises the issue of compliance, the matter currently
3 being decided is coverage.

4 Separate from the Director's authority to issue coverage
5 determinations is the authority delegated to the Division of
6 Labor Standards and Enforcement ("DLSE") to enforce compliance
7 with California prevailing wage law. The statute of limitations
8 for bringing an enforcement action varies depending on the date
9 the public works contract was entered into. For this Project,
10 Labor Code section 1775 gives the DLSE 90 days from the filing of
11 the notice of completion to file an enforcement action.

12 In setting the statute of limitations at a point in time
13 subsequent to the filing of the notice of completion, the
14 Legislature clearly envisioned that enforcement actions could be
15 commenced even though construction has ceased, final payment on
16 the contract has been released, and the work has been accepted.
17 Given the DLSE's indisputable authority to take enforcement
18 action upon completion of a public works project, the Director
19 has no less authority to issue coverage determinations within
20 that timeframe as well.

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⁶ The Director's authority to determine public works coverage questions under California prevailing wage law is quasi-legislative in nature. Cal. Code Regs., tit. 8, § 16002.5(c). See also Lusardi Construction Co. v. Lloyd W. Aubry, Jr. (1992) 1 Cal.4th 976 [4 Cal.Rptr.2d 837, 824 P.2d 643].

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Stephen J. Smith
Stephen J. Smith
Director

SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF STANISLAUS

CITY OF MODESTO V STEVEN J. SMITH, DEPT. OF INDUSTRIAL RELATIONS

NATURE OF HEARING: RULING ON PETITION FOR WRIT OF MANDATE No. 254114

JUDGE: DAVID G. VANDER WALL Bailiff: ----- Date: JULY 5, 2000
Clerk: Linda Miller Reporter: ----- Modesto, California

Appearances:

This matter having been heard, argued and submitted to the Court on June 26, 2000, Roland Stevens, Leah Arthur and Michael Milich appearing for Petitioner, Sarah L. Cohen and Vanessa L. Holton appearing for Respondent and John J. Davis appearing for the Intervenor, and after due consideration by the Court thereof,

IT IS ORDERED:

The Petition for Writ of Mandate is **DENIED**. Petitioner City of Modesto contends it did not have to pay the prevailing wage on construction of the Primary Plant Headworks and Cannery Segregation Pipeline Project. The Court finds the project is a public works project subject to prevailing wage requirements pursuant to Labor Code Section 1720(a). Article XI, section 5 of the California Constitution, does not excuse the City of Modesto from compliance with the Labor Code under the facts of this case and the applicable law. As pointed out in the Decision on Administrative Appeal, "the primary purpose of the Project is to address sewage capacity issues created by the seasonal flow of industrial waste from the unincorporated Beard Industrial Tract". Much of the pipeline construction took place outside the city, and much of the financing comes from users outside the city limits. The effect of the project is to benefit persons and entities both inside and outside the city limits. Clearly the project was one of both regional and statewide concern, not just municipal.

Respondent is directed to prepare a statement of decision.

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Department of Industrial Relations
OD Legal (SF)